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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|------------------------|-----------------------|------------------|
| 10/821,294 | 04/09/2004 | George R. Borden IV | SLA0179.1 (7146.0214) | 1108 |
| 55648 7590 06/23/2009 KEVIN L. RUSSELL CHERNOFF, VILHAUER, MCCLUNG & STENZEL LLP 1600 ODS TOWER 601 SW SECOND AVENUE PORTLAND, OR 97204 | | | | |
| EXAMINER CZEKAJ, DAVID J | | | | |
| ART UNIT 2621 | | PAPER NUMBER | | |
| MAIL DATE 06/23/2009 | | DELIVERY MODE PAPER | | |

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/821,294
Filing Date: April 09, 2004
Appellant(s): BORDEN ET AL.

Kurt Rohlfis
Reg. No. 54,405
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 1/31/09 appealing from the Office action
mailed 1/22/09.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

| | | |
|-----------|-----|---------|
| 5,473,369 | Abe | 12-1995 |
| 5,434,621 | Yu | 7-1995 |

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 27-29 are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps or acts to be performed, a statutory "process" under 35 U.S.C. 101 must (1) be tied to another statutory category (such as a particular apparatus), or (2) transform underlying subject matter (such as an article or material) to a different state or thing (Reference the May 15, 2008 memorandum issued by Deputy Commissioner for Patent Examining Policy, John J. Love, titled "Clarification of 'Processes' under 35 U.S.C. 101"). The instant claims neither transform underlying subject matter nor positively tie to another statutory category that accomplishes the claimed method steps, and therefore do not qualify as a statutory process. The Applicant has provided no explicit and deliberate definitions of "monitoring" or "increasing" to limit the steps to the electronic form of the object tracking system.

Claims 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abe (5473369) in view of Yu (5434621).

Regarding claim 27, Abe discloses an apparatus that relates to moving object detection (Abe: column 1, lines 6-10). This apparatus comprises "monitoring a level of confidence that the tracking system is tracking a target" (Abe: column 10, lines 45-64, wherein the confidence level is the judgment performed by the equations indicating whether the object has disappeared (drop in confidence)) and "altering magnification of an image visible to the operator in

response to a change in the level of confidence" (Abe: column 12, lines 5-13). While Abe discloses adjusting the zoom or magnification factor according to the results of the confidence value, Abe fails to explicitly disclose increasing the magnification in response to a decrease in the confidence level. Yu teaches that prior art camera systems require a user to manually operate a zoom switch (Yu: column 2, lines 20-27). To help alleviate this problem, Yu discloses "increasing the magnification when the confidence level decreases" (Yu: column 6, lines 36-43, wherein the increase in magnification is driving the zoom motor in the TELE direction. The confidence level is the comparison of the focus count which indicates the object is moving away or the confidence level is decreasing). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to take the apparatus disclosed by Abe and add the zoom processing taught by Yu in order to obtain an apparatus that can automatically zoom in/out on a tracked object.

Regarding claim 28, Yu discloses "the magnification is changed incrementally as the level of confidence decreases" (Yu: column 6, lines 36-43, wherein the incremental change is only varying the zoom by the amount equal to the variation detected).

Regarding claim 29, Abe in view of Yu disclose "the magnification is increased when the confidence level falls below a first threshold and decreased when the confidence level falls below a second threshold less than the first threshold" (Loveland: Abe: column 10, lines 50-65, wherein the equations

indicate a comparison with two thresholds; Yu: figures 2-3; column 5, lines 45-57; column 6, lines 36-43).

(10) Response to Argument

I. On pages 4-5, appellant argues that the 101 rejection is improper since the claims recite increasing magnification of a displayed image, i.e. by adjusting the zoom range of a camera.

The examiner notes that adjusting the zoom range of a camera is not found in the claim. The claim recites a method for advising an operator of the performance of an object tracking system comprising a first step of monitoring a level of confidence the tracking system is tracking an object. The examiner notes the confidence value is not defined within the claim. Thus, the confidence value may simply comprise of an operators judgment as to how well the operator can see the target. Furthermore, the components of the tracking system are not defined within the claim. Thus, the tracking system may simply comprise of an operator/person with a set of binoculars. The second and final step of the method claim recites increasing magnification of an image visible to the operator in response to a decrease in the level of confidence. Since the claim language does not recite how the image magnification is increased, or what performs the image magnification, the examiner interpreted this limitation as using a dial/knob on a set of binoculars to increase the zoom/magnification. Hence, the claim language neither transforms underlying subject matter

nor positively ties to another statutory category that accomplishes the claimed method steps

II. On pages 5-6, appellant argues that Abe fails to disclose monitoring a level of confidence the tracking system is tracking a target.

Abe discloses in column 10, lines 45-67, making a judgment as to whether disappearance of the target object from the screen has occurred or not. When an object disappears from the screen, the object becomes increasingly smaller, thus making it harder for the tracking system to track the target. This judgment, or indication of whether the tracking system is tracking a target, is performed by solving equations 25 and 26. Hence, the results of the equations indicate the level of confidence that the tracking system is tracking the target.

III. On page 6, appellant argues that Abe fails to disclose altering magnification of an object in response to changes in confidence.

The examiner recited Abe to show a general change in magnification in which Abe discloses in column 12, lines 5-15, wherein the change in magnification is the altering of the zoom lens. However, the examiner relied upon Yu to disclose the specific limitation as claimed.

IV. On pages 7-9, appellant argues that Yu fails to disclose increasing the magnification in response to a decrease in the level of confidence.

Yu discloses in column 6, lines 36-43, maintaining a focus count variable to determine the present object distance. This focus count variable indicates the confidence level that the tracking system is tracking the target. When the focus count is smaller than the initial focus count (decrease in level of confidence), the object is moving further away and thus Yu drives the zoom motor in the TELE direction. By driving the zoom motor in the TELE direction, Yu is increasing the magnification. Hence, Yu discloses increasing the magnification in response to a decrease in the level of confidence. Furthermore, since both Abe and Yu disclose altering the magnification value based on a level of confidence, the combination is deemed proper.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

(12) Evidence Appendix

Appellant has provided no evidence.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Dave Czekaj

/Dave Czekaj/

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June 17, 2009

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